

1 IN THE UNITED STATES DISTRICT COURT FOR THE
 NORTHERNDISTRICT OF OKLAHOMA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 and

6 OSAGE MINERALS COUNCIL,

7 Intervenor-Plaintiff,

8 vs. Case No. 14-CV-704-GFK-JFJ

9 OSAGE WIND, LLC;
ENEL KANSAS, LLC; and
10 ENEL GREEN POWER NORTH
AMERICA, INC.,

Defendants.

13 VIDEO ZOOM DEPOSITION OF JOHN H. PFAHL
14 TAKEN ON BEHALF OF THE PLAINTIFF
ON MARCH 10, 2021, BEGINNING AT 10:01 A.M.
IN TULSA, OKLAHOMA

17 APPEARANCES

18 On behalf of the PLAINTIFF:

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25 REPORTED BY: SUSAN K. McGUIRE, CSR, RPR

Exhibit 9

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1 Q. (BY MS. McCLANAHAN) So, in this regard, you
2 believe that the value of a lease from the OMC, as
3 contemplated by the Tenth Circuit, would have been
4 \$68,993, and, again, we're not talking about interest
5 right now; is that correct?

6 MR. RAY: Object to the form.

7 THE WITNESS: So, yeah. My opinion, the
8 value of the mineral mined to the OMC would have been
9 \$68,993 at the time.

10 Q. (BY MS. McCLANAHAN) Okay. So limestone was
11 not the only mineral that was excavated during the
12 construction; is that right?

13 A. That is correct.

14 Q. Do you agree that other minerals were
15 excavated?

16 A. I agree that other minerals were excavated.

17 Q. Clay and shale were also excavated during
18 the construction; is that correct?

19 A. Yes, that is correct.

20 Q. And do you agree that clay and shale are
21 considered mineral resources?

22 A. I do not believe that clay and shale meet
23 the definition of being mined. It was outlaid by the
24 Tenth Circuit court.

25 Q. Okay. But that wasn't my question. Do you

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1 agree that clay and shale are considered mineral
2 resources?

3 MR. RAY: Object to the form.

4 THE WITNESS: The definition of a mineral
5 resource takes into account a lot of factors, one of
6 which is location. In this instance, no, I actually
7 would not call clay or shale a mineral resource, I
8 would treat them as a waste product.

9 Q. (BY MS. McCLANAHAN) So you would not agree
10 that clay and shale are minerals?

11 A. Clay and shale -- clay and shale are
12 minerals.

13 Q. They are minerals, but because of the
14 location in Osage County they are not resources?

15 A. There are pretty defined industry norms when
16 it comes to what constitutes a mineral lease source.
17 That is different from a mineral. A mineral resource,
18 one of the key fundamental bases for it is that there
19 has to be a reasonable expectation of economic
20 extraction.

21 And, in this instance, I do not believe that
22 that case -- or that that is met for clay and shale
23 here.

24 Q. I'm sorry, what was the last word you said?
25 That was a little hard to hear.

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1 and shale that was excavated do not meet the standard
2 of mining that was defined by the Tenth Circuit Court.

3 Q. (BY MS. McCLANAHAN) So your decision to
4 exclude clay and shale was based solely on your
5 interpretation of the Tenth Circuit decision?

6 MR. RAY: Object to the form.

7 THE WITNESS: Yes, that is correct.

8 Q. (BY MS. McCLANAHAN) And if at trial the
9 judge determines that the excavated clay and shale
10 indeed falls under the definition of minerals mined,
11 will it be your opinion that they do have value?

12 MR. RAY: Object to the form.

13 THE WITNESS: Yes, if they were mined, there
14 would potentially be value associated with them.

15 MS. McCLANAHAN: Okay. Could I go ahead and
16 introduce Plaintiff's Exhibit 4? And this particular
17 exhibit was not attached to your report.

18 Counsel, I'm more than happy to ask
19 Ms. Hammock to E-mail this out. I'm going to put it
20 on the screen. It's really a one-page document. So
21 if anybody needs it E-mailed out, we can do that. It
22 is simply a Westlaw copy of 25 CFR 214.10.

23 Ryan, would you like a copy E-mailed, or
24 we're going to share our screen?

25 MR. RAY: I mean, at this point, if it's not

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